



Scrutineers Handbook

This Handbook is current as at 28 August 2020

ISBN 978-0-642-60712-6

© Australian Capital Territory, Canberra 2020

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without written permission from the Territory Records Office, Community and Infrastructure Services, Territory and Municipal Services, ACT Government, GPO Box 158, Canberra City ACT 2601.

Produced by Publishing Services for the

ACT Electoral Commission

PO Box 272, Civic Square ACT 2608.

Phone: 02 6205 0033

Web: www.elections.act.gov.au

Email: elections@act.gov.au

Table of Contents

Table of Contents	1
Introduction	1
Assistance and enquiries	7
Scrutineers	8
Canvassing for votes during polling	10
ACT Electoral Commission officers	11
Voting	13
The scrutiny – or counting the votes	20
Recounts	29
Disputing an election and other legal matters	30
Electoral offences	31
Glossary	40
Extract from the <i>Electoral Act 1992</i>	42
How the Hare-Clark system works – an example	48
COVID Safe Procedures	52

Introduction

How to use this handbook

If a candidate at the 2020 ACT Legislative Assembly election has asked you to be a scrutineer on their behalf, this handbook will provide you with what you will need to know, and what you can and cannot do as a scrutineer.

There are a number of rights that scrutineers have and a number of obligations that must be met. The ongoing COVID impacted environment also brings additional responsibilities and requirements for all participants in line with the Elections ACT COVID Safe plan for delivery of the election and as advised by ACT Health. These requirements and the impact on the conduct of the scrutiny are detailed in the next section.

The handbook is divided into sections of interest that reflect the various stages of the election that are relevant to scrutineers. Each section details the information at that stage of the election, and how it is relevant to scrutineers.

If at any time you are not sure of your rights or obligations, you can contact the staff at Elections ACT who will be able to help you. The **assistance and enquiries** section (see page 7) provides contact details for the ACT Electoral Commissioner and the staff of Elections ACT.

The section on **scrutineers** (page 8) describes the role of a scrutineer, how scrutineers are appointed and what scrutineers can do in general terms.

The section on **canvassing for votes during polling** (page 10) describes the limitations on where canvassing can take place, the distribution of how-to-vote cards and what the news media are permitted to do.

The section on **ACT Electoral Commission officers** (page 11) describes the various categories of electoral staff employed in polling places and at the scrutines.

The section on **voting** (page 13) describes in detail the voting process and the rights and obligations of scrutineers during this phase of the election.

The section on **the scrutiny – or counting the votes** (page 20) describes the scrutiny process, which includes the counting of the votes, and the rights and obligations of scrutineers during this phase of the election. This section will also discuss the strict COVID procedures that must be followed during scrutiny to ensure the health and safety of scrutineers and electoral staff.

The section on **recounts** (page 29) describes how and when a recount may occur.

The section on **disputing an election and other legal matters** (page 30) describes the process for disputing an election and seeking an injunction during the course of an election.

Several penalties apply for breaches of the *Electoral Act 1992*. These are set out in the **electoral offences** section (see page 31). Scrutineers should make themselves aware of these.

The **Glossary** section (see page 40) provides an explanation of the terms used in this handbook.

There is also a **Candidates information handbook** that sets out the information that your candidate needs to know. Copies can be downloaded from the Elections ACT website www.elections.act.gov.au or obtained from the Elections ACT office.

COVID Safe requirements for the Central Scrutiny Centre

Elections ACT is committed to delivering the highest standard of electoral services in the COVID safe delivery of the 2020 ACT Legislative Assembly to ensure the health and safety of electors, party workers and electoral staff. COVID Safe protection measures will guide the layout of the Central Scrutiny Centre (CSC) as well as the flow of scrutineers through the facility.

COVID Safe protection measures at the CSC include:

- **Scrutineers and staff will be required to wear face masks;**
- Scrutineers will be requested to apply hand sanitiser at the entry and exit of the premises;
- Scrutineers and staff will be required maintain 1.5m physical distancing and four square metres per person, as mandated by ACT Health for public gatherings; and
- Staff will be instructed to apply hand sanitiser at regular intervals during the unfolding, sorting and counting process.

These collective requirements will unfortunately but necessarily limit the number of scrutineers permitted within the CSC at any one point in time. However, Elections ACT will ensure equitable access to the CSC for scrutineers, to ensure that the 2020 ACT election scrutiny is conducted in a fair manner.

Elections ACT staff will maintain a record of scrutineers from each party/non-party candidate and continuously monitor the total numbers of personnel within the centre. This may require that parties adjust the number of their respective scrutineers within the centre in order to accommodate the inclusion of other participants. Such direction to reduce the number of scrutineers if required will be made by the Electoral Commissioner or the Deputy Commissioner at the time to the relevant party or non-party candidate.

I request your cooperation in abiding by these necessary COVID safe arrangements to ensure that all electoral participants are able to participate in this key electoral integrity and transparency process in a COVID safe manner.

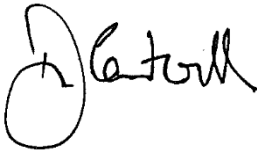
For further detail on the COVID safe protection measures that will be in place for the 2020 ACT election, please view the Elections ACT [COVID Safe Election Service Delivery Plan](#) published on the Elections ACT website.

Disclaimer

This information booklet is intended to summarise the electoral law relating to scrutineers for ACT Legislative Assembly elections, but it is not a substitute for the law.

Scrutineers, candidates and other interested persons are advised to obtain a copy of the Electoral Act from www.legislation.act.gov.au and seek their own legal advice if necessary.

This version of the Scrutineers information handbook incorporates the provisions of the Electoral Act as they applied in **28 August 2020**. Readers are strongly advised to regularly check the Elections ACT website for the latest version of this handbook.



Damian Cantwell AM
Electoral Commissioner

Changes to electoral law since 2016

While changes have been made to electoral legislation since the 2016 election, none of these changes significantly impact on the rights or obligations of scrutineers. Changes made include:

- Amendments to the close of roll process;
- Changes to authorisation of electoral matter laws;
- A requirement for Elections ACT to host candidate statements on the Elections ACT website;
- Removal of provisions allowing for the 100m boundary in which canvassing is prohibited, to be set from an enclosure. 100m boundaries are now uniformly set from all points of the building in which polling is located.
- Calculating fractional transfer values for votes to six decimal places rather than rounding down to the nearest whole number
- Amendments to the *Public Unleased Land Act 2013* to allow an authorised person to immediately remove electoral advertising signs from public unleased land, where the signs are not compliant with statutory requirements, without providing prior notice to the owner of the sign.

Elections for the ACT Legislative Assembly

The 2020 election will be the eighth ACT Legislative Assembly election held using the Hare-Clark electoral system and the sixth ACT election where electronic voting will be available in some locations.

Electronic voting will be available at 15 early voting centres (which will also be open on election day as ordinary polling places).

Electors at these locations will be able to choose to vote electronically or to vote using traditional paper ballots.

Electronic voting will not affect the role of scrutineers in the polling place.

As has been the case since the 2008 ACT election, certified lists of electors will be in an electronic form, rather than in printed form, on laptop computers. Voters' names will be marked on the laptops as having voted.

There will be an initial count of first preference votes on polling night.

Starting on the Monday after election day, the preferences marked on all formal paper ballots will be scanned into a computer system at the central scrutiny centre.

The scanned images will be "read" by intelligent character recognition software and the interpretation of the ballot paper preferences must pass strict rules to ensure accuracy before being committed to the count. This will involve manual checking by electoral officials in some cases.

The scanning program will highlight ballot papers that appear to have numbering errors, such as missing or duplicated numbers, as well as numbers that involve doubt as to the

voter's intention. Scrutineers will be able to observe this process and to challenge apparent incorrect interpretation of the original ballot papers.

A computer program is then used to add the electronic ballots taken in electronic polling places to the scanned paper ballots, then count the votes and distribute the preferences according to the Hare-Clark rules.

Progressive results, an interim distribution of preferences, of the computer tally of preferences will be released from polling night until the conclusion of the count. Scrutineers should be aware that these progressive results will serve as an indication of the likely winning candidates, but that the final result may be different from any interim results.

Another significant feature of elections in the ACT is the ban on canvassing within 100 metres of a polling place. Under the ban, it is an offence, within a polling place, or within 100 metres of the building, to:

- Do anything for the purpose of influencing the vote of an elector as the elector is approaching, or while the elector is at, the polling place;
- Do anything for the purpose of inducing an elector not to vote as the elector is approaching, or while the elector is at, the polling place; or
- Exhibit an electoral notice other than a notice authorised by the Commissioner for display there.

The ban applies to polling places on election day, early voting centres before election day and mobile polling¹ in hospitals and institutions.

The imposition of the ban means that how-to-vote cards cannot be distributed within 100 metres of a polling place. There are no other restrictions on distribution of how-to-vote material, other than the usual rules applying to content and authorisation as well as 2020 election specific requirements in relation to appropriate social distancing measures as mandated under ACT Government health directions for the ACT.

Early voting centres in the ACT function in the same way as polling places on election day. Ordinary votes are issued without declaration.

¹ Due to the health risks associated with COVID-19, the ACT Electoral Commission will not be delivering mobile polling services to any institutions for the 2020 ACT election.

Election dates

Last day for applying to register a political party	30 June 2020
Pre-election period commences/nominations open	11 September 2020
Preliminary roll close	6 pm 11 September 2020
Nominations close	12 noon Wednesday, 23 September 2020
Nominations declared/ballot paper order determined	12 noon Thursday, 24 September 2020
Early voting commences	Monday, 28 September 2020 (9am – 5pm Saturday to Thursday, 9am – 8pm Fridays)
Preliminary scrutiny of early voting declaration votes can commence	Monday, 12 October 2020
Early voting concludes	Friday, 16 October 2020
Election day (hours of polling)	Saturday, 17 October 2020 (8am - 6pm)
Election day (scrutiny of ballot papers commences within polling places)	Saturday, 17 October 2020 after 6pm
Initial scrutiny of postal, early voting and declaration votes commences:	Sunday, 18 October 2020 (10am)
Scanning of paper ballots commences	Monday, 19 October 2020 (10am)
Last day for receipt of postal votes	23 October 2020
Distribution of preferences completed not earlier than	24 October 2020
Legislative Assembly formed	Within 7 days of the declaration of the poll

Note 1: Dates for commencement and conclusion of scrutines may change during the course of the election. Elections ACT will notify candidates and parties of the actual dates of scrutines. If in any doubt, contact Elections ACT.

Assistance and enquiries

Elections of Members of the ACT Legislative Assembly are administered by the ACT Electoral Commissioner and the staff of Elections ACT.

Assistance on any aspect of the election may be obtained from, and enquiries should be directed to, the staff of Elections ACT.

Copies of this handbook can be downloaded from the Elections ACT website **www.elections.act.gov.au** or obtained from the Elections ACT office.

Contacting Elections ACT

Locality address:

ACT Electoral Commission
Level 6, 221 London Circuit
CANBERRA CITY 2601

Postal address:

ACT Electoral Commission
PO Box 272
CIVIC SQUARE 2608

Phone: (02) 6205 0033

Email: elections@act.gov.au

Website: www.elections.act.gov.au

Scrutineers

This section describes the role of scrutineers, how they are appointed and what they can do in general terms. Detailed information on the rights and obligations of scrutineers at the various stages of the election is explained in later sections.

Role of scrutineers

Scrutineers observe on behalf of candidates the polling and scrutiny conducted by electoral officials. Scrutineers have legal rights and obligations under the Electoral Act.

Candidates may not in any way take part in the conduct of an election. They may not be appointed as scrutineers, nor can they be present while a scrutiny is ongoing.

Appointment of scrutineers

Candidates may appoint scrutineers to represent them at every polling place in the ACT during early voting and on election day. Candidates may also appoint scrutineers to represent them at every scrutiny centre at which votes are being counted or at which a “preliminary scrutiny” of declaration votes is taking place.

References in this handbook to “polling places” will generally include references to early voting centres in the ACT.

Preliminary scrutines, at which the decision is made to accept or reject a declaration vote for further scrutiny, can be conducted from the Monday prior to election day up to the completion of counting after election day.

Interstate early voting centres only issue declaration votes. Scrutineers are not entitled to be present at interstate early voting centres. All declaration votes cast at an interstate early voting centre can be examined by scrutineers before being admitted during the preliminary scrutiny.

Candidates must appoint scrutineers by supplying a signed written notice to the Electoral Commissioner. Appointment forms will be made available for this purpose.

Each scrutineer must sign an undertaking in the approved form (attached to the appointment form) that he or she will not attempt to influence the vote of an elector and that he or she will not disclose any knowledge acquired concerning the vote of any elector. For the 2020 election we have also included the requirement to sign an undertaking that he or she will abide by all COVID health and safety measures as directed by the Electoral Commissioner.

On election day, scrutineers should present completed appointment forms to the officer in charge (OIC) of the polling place or scrutiny centre.

Limitations on numbers of scrutineers appointed

At a polling place on election day or at an early voting centre in the ACT, the number of scrutineers representing a particular candidate must not exceed the number of officers responsible for issuing ballot papers at that place.

At a scrutiny centre the number of scrutineers representing a particular candidate must not exceed the number of officer's present.

There may also be limitations imposed on the number of people at each scrutiny venue in compliance with the social distancing rules for COVID-19. Scrutineers are expected to respect the rules and adhere to social distancing requirements at all venues. See Attachment C for further information on COVID health measures.

Scrutineer's badge

A scrutineer must wear an identification badge supplied by the Electoral Commissioner at all times during their engagement with the scrutineering process.

Badges will be made available once a signed scrutineer appointment form is handed to the Officer in charge of a polling place or to Elections ACT staff at the central scrutiny venue.

Canvassing for votes during polling

This section describes the limitations on where canvassing can take place, the distribution of how-to-vote cards and what the news media are permitted to do.

Canvassing outside polling places

Canvassing for votes is banned within 100 metres of a polling place, early voting centre or building in which mobile polling is taking place. Under the ban, it is an offence, within a polling place, or within 100 metres of the building containing a polling place, to:

- Do anything for the purpose of influencing the vote of an elector as the elector is
- approaching, or while the elector is at, the polling place;
- Do anything for the purpose of inducing an elector not to vote as the elector is approaching, or while the elector is at, the polling place; or
- Exhibit an electoral notice other than a notice authorised by the Commissioner for display there.

An officer may, if directed by the Commissioner, remove or obliterate a notice which is exhibited in breach of the ban. It is an offence to obstruct an officer exercising or attempting to exercise this function.

The imposition of the ban means that how-to-vote cards cannot be distributed within 100 metres of a polling place. There are no other restrictions under the Electoral Act on distribution of how-to-vote material outside the 100 metre limit, other than the usual rules applying to content and authorisation.

Attachment C describes ACT Government health restrictions and laws in place regarding social distancing. Scrutineers must abide by these directives during canvassing particularly maintaining 1.5 metres distance from other party workers, Elections ACT staff and electors.

How-to-vote cards

How-to-vote cards may be distributed to electors outside the 100 metre limit, for example, by direct mail or distribution at shopping centres (provided the distribution is at least 100 metres away from a building in which a polling place is located). Electors may take how-to-vote cards with them when they go to vote, provided they do not give them to other electors or leave them behind in the polling place.

News media photographers

News media photographers or their equipment must not hinder or inconvenience polling staff or voters, and no photographs are to be taken of persons actually recording a vote so as to reveal how that person voted. Anyone arranging for photographers to visit a polling place should ask permission of the Electoral Commissioner or the OIC of the polling place, beforehand.

ACT Electoral Commission officers

This section describes the various categories of electoral staff employed in polling places and at the scrutines. All official electoral staff will be identifiable by a name badge that also describes the position they hold.

Polling place officers

Each polling place is staffed by an officer in charge (OIC) and a range of other polling staff. Depending on the estimated number of voters expected at a polling place, a typical polling place will be staffed by an OIC, a second in charge, two queue controllers, a ballot box guard and a number of vote issuing staff. Early voting centres will also have e-voting officers to assist electors with electronic voting. All staff, other than the OIC and 2IC, will be rotated through a variety of duties.

There are two types of vote issuing staff. "Ordinary vote" issuing staff who issue ordinary votes to electors enrolled for an electorate and "Declaration vote" issuing staff who issue declaration votes to electors who cannot be found on the electoral roll or who have their name already marked on the certified list as having already voted.

After the polls close at 6 pm on election day, each polling place becomes a scrutiny centre and the officers employed at the polling place will be responsible for counting the votes and packaging all polling place material for return to the central scrutiny centre.

Polling Area Managers

Officers will be appointed as Polling Area Managers, with responsibility for reviewing the operation of a number of polling places each. These officers will visit each polling place at least twice on election day to ensure procedures are being followed, review the functioning of the polling place and to assist OICs in resolving any concerns, particularly the implementation of the ban on canvassing within 100 metres of polling places.

Central scrutiny centre officers

At the central scrutiny centre, 3 different processes occur:

- Preliminary scrutiny of postal and declaration votes;
- First count of ballot papers issued as postal, mobile and declaration votes, as well as the paper ballots taken during early voting; and
- Scanning of all paper ballots.

Ballot papers for each electorate will be scanned into a computer system by scanning operators. There will also be verification officers who will be interpreting the preference numbers on scanned ballot papers that are not clear. The scanning and verification operation will be supervised by one or more senior Elections ACT officers. These senior officers will have specific powers under the Electoral Act in relation to the scrutiny.

Elections ACT officers will determine the layout of the central scrutiny centre in compliance with health and safety directives. These officers will also have the authority to determine the timing and sequence of the various verifications to maximise efficiency of the process and minimise health risks of the people present.

The Electoral Commissioner and Deputy Electoral Commissioner

The Electoral Commissioner has statutory responsibility for the conduct of ACT elections. The Electoral Commissioner has final authority over all other officers appointed as OICs and may affirm or vary any decision made by any other officer.

The Electoral Commissioner is assisted by the Deputy Electoral Commissioner, who is authorised to carry out all the statutory functions of the Electoral Commissioner.

The Electoral Commissioner and the Deputy Electoral Commissioner are responsible for reviewing all informal ballots, observed by scrutineers.

Voting

This section describes in detail the voting process and the rights and obligations of scrutineers during this phase of the election.

Types of votes

Scrutineers will observe electors recording different types of votes. Consequently, they should be aware of the different categories of voting as their rights and duties may differ in the observation of each:

- Ordinary voting at early voting centres (using paper ballots or electronic voting);
- Ordinary voting at a polling place that used to be an early voting centre (using paper ballots or electronic voting);
- Declaration voting at a polling location;
- Postal voting;
- Voting by mobile polling²; and
- Assisted voting.

Scrutineers' rights during voting

A scrutineer has the right to:

- Enter and leave the polling place at any time and be replaced by a properly appointed and relieving scrutineer, noting only one scrutineer for each candidate at each issuing point can be present in the polling place at any one time.
- Observe all voting procedures except the elector voting (unless the elector is being assisted by an Elections ACT officer).
- Observe the OIC sealing each empty ballot box before the poll commences at early voting centres or mobile polling locations, the sealing of each ballot box at the conclusion of each day's polling and the opening of each ballot box at the close of the poll after 6 pm on election day.
- Observe the OIC sealing each empty ballot box before polling commences at each polling place on election day (8 am) and the opening of each ballot box after the close of the poll (6 pm).
- Observe the questioning of voters by the issuing officer.
- Observe voting by disabled and illiterate voters who request assistance from an electoral officer. A scrutineer may enter a voting compartment to witness an electoral officer marking the ballot (paper or electronic) of a person who is incapable of marking the ballot without assistance. However, such a voter may appoint another person to

² Due to the health risks associated with COVID-19, the ACT Electoral Commission will not be delivering mobile polling services to any institutions for the 2020 ACT election.

enter the voting compartment with him or her to mark, fold and deposit the ballot paper, or to vote electronically. In this case neither an officer nor a scrutineer may accompany the elector into the voting compartment.

- Observe the export of data from the electronic voting server for forwarding to the central scrutiny centre.

Scrutineers **must not**:

- Remain in a polling place without an identification badge;
- Interfere with, or attempt to influence, any elector;
- Touch any ballot paper;
- Disclose any knowledge gained concerning the vote of a person;
- Wear a badge or emblem of a political party or candidate within the polling place; or
- Deliberately show or leave in the polling place any how-to-vote card or similar direction as to how an elector should vote; and
- Violate health and safety directives in place regarding social distancing.

Electoral rolls

Before polling begins, each OIC is supplied with up-to-date certified copies of the electoral roll for each electorate in the ACT. These rolls are called certified lists of electors.

For the 2020 election the roll will be in an electronic form, loaded onto laptop computers. As each voter receives their ballot paper their name will be “marked” on the electronic roll, and, within a few minutes, will be marked on the roll on every laptop in all polling places across the ACT. This will decrease the possibility for multiple voting but may increase the likelihood of the names of some voters showing as already marked as voted. These voters may have a declaration vote (see below), and their entitlement to vote will be checked at the scrutiny of declaration votes.

In addition to the roll showing each elector’s name, address and electorate, it will show his or her gender and year of birth. This information will assist the polling officials to correctly identify the elector’s entry on the roll, particularly where parents and children have the same or a similar name.

Apart from declaration voters only those persons whose names are on the certified lists are entitled to an ‘ordinary’ vote at an election.

If an elector is not on the roll, the elector may complete a declaration vote. The elector will then be informed that in order for the vote to be able to be counted, the elector will need to enrol prior to 6pm on election day, 17 October 2020. Laptop terminals will be made available within each polling location to assist not-on-roll electors to enrol at the time of voting.

Ballot papers – the “paper” version

An elector is entitled to receive one ballot paper for his or her electorate. Legislative Assembly ballot papers are colour coded according to the electorate:

- Brindabella — BLUE
- Ginninderra — GREEN
- Kurrajong — KHAKI
- Murrumbidgee — MAUVE
- Yerrabi — YELLOW

An elector who spoils a ballot paper before placing it in the ballot box may, on returning it to a polling official, receive a new one.

Ballot papers – the “electronic” version

Where an elector chooses to vote in electronic form, the elector will be provided with a unique QR code printed on a card called an e-voting card. The e-voting cards are also colour coded by electorate (see above). This e-voting card is to be used in an electronic voting computer to validate the person’s right to vote and to identify the elector’s electorate. e-voting cards are pre-printed prior to the election period. There is no link between the identity of the elector and the e-voting card. When the e-voting card is scanned by the scanner, an electronic ballot paper will appear on screen. The elector can indicate preferences by touching the candidate squares next to the name of the candidate they wish to provide a voting preference to.

When the elector has completed marking preferences, a confirmation screen will be displayed listing the candidates, in preference order, the voter has indicated preferences for. The elector is given the option of confirming the vote or returning to the ballot paper and changing the vote.

The elector confirms the vote by scanning the e-voting card a second time. This second scan of the e-voting card is the electronic equivalent of lodging a ballot paper in a ballot box – after this point corrections cannot be made. After casting an electronic vote, the elector must deposit the e-voting card in the ballot box.

Once a e-voting card has been used to cast a vote, it cannot be used to vote again.

An elector who is blind or vision impaired may cast an electronic vote in privacy using audio instructions to navigate the ballot paper, delivered via headphones.

Ordinary voting at a polling place

Ordinary votes are issued in polling places on election day to any elector whose name is on a certified list.

“Silent” electors whose addresses are suppressed on the electoral roll for reasons of personal or family safety, can cast an ordinary vote.

Ordinary votes can be issued for all electorates at any polling place, regardless of the electorate in which the polling place is located. There are no “absent” votes issued.

There are two types of vote issuing staff: ordinary vote and declaration vote issuing staff.

Ordinary vote issuing staff will be provided with an electronic version of the certified list which lists all of the electors for each of the five electorates and are provided with ballot papers or e-voting cards for each of the five electorates.

Declaration vote issuing staff will issue declaration votes (see below).

When issuing an ordinary vote, the issuing officer must:

- Ask the elector for his or her full name and address (note that a “silent” elector is not required to state his or her address), find the name on the electronic certified list and mark the electronic certified list;
- Offer the elector an electronic ballot (e-voting card) or paper ballot; and
- Issue the elector with the correct Legislative Assembly ballot paper (paper or e-voting card), making sure that the name of the electorate on the ballot paper or e-voting card matches the name of the electorate on the electronic certified list.

In the case of a paper ballot, the elector must retire alone to a voting compartment and, in private, mark his or her vote on the ballot paper, fold it so that the vote is concealed, and then, without unfolding the ballot paper, place it in the ballot box and leave the polling place.

Note that ballot papers do not have to be initialled by the issuing officer; nor are polling officials required to ask voters “have you voted before in this election?”

Declaration voting at a polling place

Declaration votes are issued at a polling place if:

- An elector’s name cannot be found on the certified list of electors for the electorate;
- An elector’s name has been marked on the certified list of electors as having already voted at a polling place; or
- The polling official is not satisfied that the person claiming to vote is the person whose name appears on the roll, because it is apparent that the age or gender of the person claiming to vote is not consistent with the age or gender shown on the roll for that person.

All declaration votes must be made on paper ballots.

When a declaration vote is being issued:

- The declaration voter must complete a declaration envelope stating his or her name and address (with the exception that an elector with silent enrolment is not required to disclose his or her address);

- The declaration voter then signs the declaration on the envelope in the presence of the issuing officer who must sign as witness to the declaration;
- The issuing officer must give the person a statement explaining declaration voting;
- The issuing officer must stamp the word 'declaration' on the relevant ballot paper;
- The elector is then given the relevant ballot paper and a vote is cast in the usual manner; and
- The declaration voter returns the folded ballot paper to the issuing officer who then places it in the signed and witnessed declaration envelope, seals it and puts it in a ballot box for later dispatch to the central scrutiny centre.

Overseas Electronic voting

An elector may vote using the Overseas Electronic Voting system (OSEV) if he or she is in an overseas location during the voting period. Overseas e-votes are declaration votes.

The OSEV system will be active between 9 am (AEST) 28 September and 6 pm (ADST) on Saturday 17 October.

Overseas electors must hold or create an ACT Digital Account in order to complete the OSEV vote process. Users must first provide documents via ACT Digital Account to verify their identity. Once an elector's identity has been verified, electors can proceed to the voting process. The vote registration process attempts to match the information provided by the elector to the electoral roll. Where a match is found the elector will be provided with the appropriate electorate ballot paper to complete. If the elector cannot be matched to the electoral roll on the information they have supplied as part of the identity verification process, the elector is provided with the option to provide alternate addresses to match against. If after three attempts a match cannot be made, electors will have the option of continuing to the vote process using an address that they believe they are entitled to vote under. As overseas e-votes are declaration votes, a process of determining eligibility is conducted on all overseas e-votes before admitting the votes to the count.

Electronically submitted votes are encrypted and digitally signed for security purposes.

An overseas e-vote is the primary voting option for electors who are overseas. Postal voting may also be used by overseas electors.

Postal voting

An elector may apply for a postal vote if he or she:

- Expects to be unable to attend a polling place on election day or an early voting centre in the ACT before election day; or
- Has silent enrolment and thus his or her address does not appear on the roll.

An eligible elector can apply orally or in writing for a postal vote (other than a registered general postal voter — see below). An application for a postal vote may be made by phone, on-line on the Elections ACT website **www.elections.act.gov.au**, or by email.

A person authorised by an eligible elector may also apply for a postal vote on behalf of the eligible elector.

The application must include a declaration that the elector is entitled to apply for a postal vote. There is no requirement for the applicant to sign an application.

An elector who is outside of Australia can vote using the Overseas e-voting system as the primary voting option. However, they may still choose to apply for a postal vote if this is their preferred approach. If postal voting is used, electors must apply for their postal vote in the normal method (email, online, phone) and the ballot papers will be sent from Elections ACT in Canberra. Ballot papers cannot be issued by Australian embassies or high commissions as they are for federal elections.

Applications from electors in Australia must be received by Elections ACT by no later than the Thursday before election day to allow time to post material to the elector before election day.

Applications from electors outside Australia must be received by Elections ACT by no later than the Friday 8 days before election day to allow time to post material to the elector in an overseas location before election day.

On receipt of a postal vote application and once the voting period begins, Elections ACT will send postal vote material to the elector, which includes a postal vote certificate, a ballot paper and a return envelope.

After receiving the postal vote material, the elector must:

- Complete the declaration on the postal vote certificate;
- Sign the postal vote certificate;
- Complete the ballot paper; and
- Enclose the ballot paper in the envelope, and post or deliver the sealed envelope to the ACT Electoral Commissioner.

Electors who are registered general postal voters automatically receive a postal vote certificate and a postal ballot paper after the close of nominations.

Voting at early voting centres

Early voting centres in the ACT issue ordinary votes to electors, unless a declaration vote is required for the reasons specified above. Scrutineers are entitled to be present at ACT early voting centres during the voting period, in the same way they are entitled to be present at polling places on election day.

An elector may present and request an early vote at any early voting centre during the times determined by the Electoral Commissioner. For the 2020 election, early voting is available to all electors and will be available every day of the voting period from 28 September 2020 to 16 October 2020. Opening hours for these locations are 9:00 am until 5:00 pm Saturday through to Thursday and extended hours on Fridays 9:00 am until 8:00 pm. Electors may vote at any polling place in the ACT, regardless of the electorate they are enrolled in.

Early voting centres will be located in Belconnen town centre, Canberra City, Chisholm, Dickson, Flynn, Gungahlin town centre, Harrison, Kippax, Lanyon, Manuka, Tuggeranong town centre, Weston Creek and Woden.

All early voting centres in the ACT will have facilities to vote electronically and on paper.

Early voting will also be available at the head office of the State/Territory Electoral Commission in each capital city with the exception of New South Wales and Victoria. Electors in New South Wales and Victoria must either vote in the ACT during the voting period, or if this is not possible, apply for a postal vote.

At interstate early voting centres, all votes cast will be declaration votes. Scrutineers not entitled to be present at interstate early voting centres.

Mobile polling

Under normal conditions, Elections ACT would arrange mobile polling activities for the election at hospitals, nursing homes and the Alexander Maconochie Centre. However, given the health concerns for residents of these institutions under the ongoing COVID-19 pandemic environment, Elections ACT has decided against delivering mobile polling arrangements to any institution for the forthcoming ACTLA election.

Instead, Elections ACT will assist these institutions to facilitate the use of postal voting for the residents that are not able to attend an early voting centre or polling place.

Assisted voting

The OIC may permit any elector unable to vote without assistance to be accompanied by a person appointed by the voter to mark, fold and deposit the voter's ballot paper, or to assist with casting an electronic vote. Where no such person is appointed, the same role may be performed by a polling official in the presence of any scrutineers present or, if no scrutineers are present, in the presence of another polling official. The voter may indicate a voting intention to the polling official using a how-to-vote card.

The scrutiny – or counting the votes

This section describes the scrutiny process, which includes the counting of the votes. This section sets out the scrutineers' rights and obligations during this process.

Stages of the scrutiny of votes

While the key stages of a scrutiny under the Hare-Clark system remain the same as for a manual count of paper ballots, the application of a computerised counting process has led to changes in some of the processes involved.

There are several different stages to the scrutiny of votes:

- The preliminary scrutiny of declaration votes; when the decision is made to admit or reject a declaration vote for further scrutiny. During the preliminary scrutiny, the ballot papers themselves remain sealed in the declaration envelope. Preliminary scrutines may commence up to 5 days before election day.
- The initial count of first preference votes taken on paper ballots on polling night and after.
- The publication of first preference results of votes cast electronically. These results will be reported and published on the Virtual Tally Room (VTR) on election night. This includes all electronic votes taken during early voting.
- The publication of interim distribution of preferences. Electronic votes from each electronic polling place (early voting and election day) will be amalgamated centrally at the central scrutiny centre on election night and an interim distribution of preferences will be published on the Elections ACT website on election night at **www.elections.act.gov.au**. These interim distribution of preferences will be updated progressively in the week following election day, to include results from polling places as the scanning of ballot papers progresses.
- The scanning of all paper ballots and the verification of the interpretation of preferences by the scanning process by electoral officials after the election, and the computerised amalgamation of these votes with the votes cast electronically.
- Running the computer program for the Hare-Clark scrutiny to determine the final result.
- Recounts (if necessary) at the direction of the Electoral Commissioner or the Electoral Commission.
- The declaration of the poll.

Scrutineers' rights during the scrutiny

A scrutineer may:

- Inspect the condition of and observe the opening of ballot boxes by the OIC at the close of the poll (after 6 pm) on election day in readiness for the scrutiny (ballot boxes containing votes taken at the early voting centres are forwarded unopened to the

central scrutiny centre). Scrutineers may inspect these ballot boxes at the central scrutiny centre.

- Observe preliminary scrutines of declaration votes.
- Observe the counting of ballot papers on election night, further counting of ballot papers after election night, including the scrutiny of admitted postal and declaration votes, and any recount of ballot papers.
- Observe the scanning of ballot papers and the verification of preference interpretation by electoral officials at the central scrutiny centre.
- Object to the admission or rejection of a ballot paper, in which case the officer conducting the scrutiny decides whether the vote is formal or informal (the officer may reject a ballot paper as informal even if no scrutineer has objected to it as informal). All ballot papers, whether formal or informal, will be rechecked by Elections ACT. At the central scrutiny location, a scrutineer may request that a ballot paper be reserved for the decision of the Electoral Commissioner or the Deputy Electoral Commissioner.
- Countersign endorsements on any parcels of ballot papers, and statements showing votes for each candidate and the number of informal ballot papers.

A scrutineer must not (other than when casting a vote to which the scrutineer is entitled) handle, separate or arrange ballot papers or touch equipment or computer terminals which are being used for the scanning or verification of ballot papers, or for the processing of the scrutiny.

Penalty: 10 penalty units or imprisonment for 6 months, or both.

Whilst scrutineers have the right to observe all stages of the scrutiny and challenge the formality decisions made by sorting staff, it is the duty of the OIC to ensure that the election results from the polling place are reached in an orderly and timely way. To achieve an agreeable balance between the rights of scrutineers and the duties of the OIC it is important that scrutineers refrain from unreasonable requests or queries during the scrutiny.

The scrutineers must comply with the ACT Government health guidelines and restrictions enforced for social distancing and hygiene during scrutiny to safeguard the public, election officers and party workers. Detailed instructions are provided at Attachment C.

Formality rules

Rules for formality of ballot papers fall into two categories: rules to determine whether the ballot paper is an authentic one which does not identify the voter; and rules to determine whether the voter has marked the ballot paper sufficiently well for it to be accepted.

Authenticity checks

A ballot paper is classed as informal if the OIC of the scrutiny centre is not satisfied that it is authentic. Normally, every ballot paper will be printed with a colour screen, including a security device. Ballot papers that have been fraudulently copied will be readily apparent and will be set aside as informal.

In rare circumstances where official ballot papers are unavailable, handwritten or photocopied ballot papers may be issued. In these cases, the authenticity of the ballot

papers will be endorsed on the reverse of the ballot papers by the issuing officer and noted in records kept by the issuing officer.

Postal votes and other declaration votes will have the word "DECLARATION" printed or endorsed on them adjacent to the words "Ballot Paper". Any declaration votes placed in a ballot box without being admitted at a preliminary scrutiny will be enclosed in an envelope and set aside as informal.

A ballot paper is also classed as informal if it has writing on it by which, in the opinion of the OIC, the elector can be identified.

Formality checks

An authentic ballot paper is informal where:

- It has no first preference marked in a candidate square; or
- A first preference is marked in two or more candidate squares.

While the statutory instructions on the ballot papers ask electors to show preferences for at least as many candidates as there are vacancies, a ballot paper is nevertheless considered formal if it has one (and only one) first preference.

A first preference must be indicated with a number. Ticks and crosses are not accepted as first preference marks.

Except as provided for above, a ballot paper is formal and effect shall be given to the elector's intention so far as that intention is clear. In particular, a preference may be validly marked outside a candidate square so long as the elector's intention is clear.

The initial scrutiny on polling night in polling places

Counting of ordinary votes cast in polling places on paper ballots commences immediately after the poll closes at 6 pm on election day.

Votes cast electronically will be counted and displayed on a computer screen in the polling place (first preference data only). Voting data will then be downloaded onto encrypted USB drives, which will then be transported to the central scrutiny centre, where interim preference distribution results will be published. Each USB drive will have an associated "hash key", which is an encrypted number that can be used to verify that the data has not been tampered with during transit.

Ordinary votes can be cast for all five electorates at any polling place, which means that most polling places will have ballot papers from all five electorates to count. The ballot papers from the "home" electorate will be dealt with first, followed by ballot papers from the "away" electorates.

If the total number of ballot papers cast for one particular electorate in a polling place is less than 20, those ballot papers will not be sorted to candidates. Instead the total number will be recorded, and the ballot papers will be parcelled and sealed unsorted. They will then be despatched to the Elections ACT central scrutiny centre, where they will be combined with other ballot papers and counted to candidates. This is to preserve the secrecy of the ballot.

Where the total number of ballot papers for an electorate is 20 or more, they are sorted by the polling officials into first preference votes and informal ballot papers. The results are then tabulated and published on the Virtual Tally Room.

Note that where there is significant doubt as to the formality of a ballot paper, polling officials are instructed to class such ballot papers as informal on polling night. All ballot papers are re-examined again after polling night and any doubtful ballot papers will be dealt with by a senior officer. Further, ballot papers where the numbers are placed outside candidate squares are also placed into the informal pile on election night. Although these ballot papers may not be informal, this process helps ensure that the scanning software deals with them appropriately.

As soon as the scrutiny of ordinary votes ends, the ballot papers are placed in sealed boxes and delivered to the Electoral Commissioner.

The scrutiny commences as soon as practicable after the close of the poll. Scrutineers are entitled to be present throughout and all proceedings of the scrutiny must be open to scrutineers. The scrutiny may be adjourned from time to time as might be necessary until the counting of the votes is complete.

Important COVID related procedure

The counting of ballot papers within a polling place on election night is conducted in the following manner:

1. Open ballot box and empty contents;
2. Unfold ballot papers;
3. Sort ballot papers to electorate;
4. Sort electorate ballot papers ('home' electorate first) to the column/party in which the number 1 appears;
5. Sort each pile of column/party ballot papers to the candidate within that column/party who received the number 1;
6. Check each pile that it has been sorted correctly;
7. Count ballot papers and record number;
8. Report figures.

Due to the requirement to maintain appropriate COVID safety and social distancing measures during the scrutiny, scrutineers and electoral officers **MUST** wear a mask at all times. In addition to this, to minimise the risk that appropriate social distancing measures are not breached during the count process, **scrutineers will not be allowed to engage in steps 2 through 5.**

To ensure that the rights of scrutineers are not impacted by this alteration to procedure, Step 6 will be conducted in the following way:

Once each candidate-based pile has been established, a polling official will take a pile to a designated re-throw table. The re-throw table will be established to include 'sneeze screens' which will allow a number of scrutineers to be involved in the oversight of the re-throw while maintaining 1.5m from other scrutineers and polling

officials. Only one scrutineer will be able to stand in front of each sneeze screen. A sneeze screen may be able to be established on three of the four sides of the re-throw table allowing three scrutineers to witness any individual re-throw. During the re-throw the polling official will openly and individually check each ballot paper within the pile to ensure that it has been sorted to the correct candidate. This will allow scrutineers to scrutinise ballot papers as required. Once a candidate pile has been re-thrown, the polling official will offer any other interested scrutineers who did not witness the original re-throw, the opportunity to witness a second re-throw of that pile. Following the second potential re-throw, no further re-throws will take place on an individual pile. This process will be repeated for each electorate.

The initial scrutiny at the central scrutiny centre

Ordinary votes cast on paper at early voting centres will be kept in secure storage until they are ready for counting. These votes will be counted at the central scrutiny centre on the Sunday after election day.

Declaration votes (including declaration votes cast at early voting centres, polling places, all postal votes and all overseas e-votes) must undergo a "preliminary scrutiny" to determine whether the person making the declaration is eligible to vote, before they can be opened and the ballot papers inside are counted (see below) (note: overseas e-votes are not contained in an envelope but the vote is electronically kept separate from the identity of the elector and a determination is made upon the eligibility of the elector before it is rejected or admitted to the count). Those declaration vote ballot papers admitted for further scrutiny before the close of the poll will be counted at the central scrutiny centre on the Sunday after election day. (Declaration vote ballot papers will continue to be counted in the week after election day until they have all been dealt with. Postal votes may be received by the Electoral Commissioner until the 6th day after election day.)

Ballot papers in parcels smaller than 20, received unsorted from polling places, will also be combined and counted at the central scrutiny centre in the week following election day.

Scrutiny of declaration votes

The scrutiny of declaration votes will be carried out at the central scrutiny centre. This scrutiny is conducted in 2 stages:

- **The preliminary scrutiny** of postal vote certificates or declaration envelopes containing postal or other declaration votes to determine whether the claimant is entitled to a vote (preliminary scrutines may commence from the Monday prior to election day); and
- **The further scrutiny** when the ballot papers admitted to the scrutiny are treated in the same way as ordinary ballot papers (further scrutines may only commence after the close of the poll).

Preliminary scrutiny of declaration votes

The Electoral Commissioner is required to give notice of the date, time and place of commencement of a preliminary scrutiny. A notice must be prominently displayed at the

office of the Electoral Commissioner not later than 4.00 pm on the day before the preliminary scrutiny is to begin. The Commissioner will also notify, as far as practicable, all parties and candidates of the time of each scrutiny. In the case of postal votes, the OIC of the scrutiny or his or her delegate will, in full view of any scrutineers who may be present, compare and allow scrutineers to inspect the elector's signature on each postal vote certificate and the signature on the elector's enrolment application where available as a scanned image. The aim of this process is to indicate that the signature on the postal vote certificate is genuine.

A declaration vote ballot paper will be accepted for further scrutiny if the OIC is satisfied that the elector is enrolled (or entitled to be enrolled and is not enrolled because of official error) for the electorate, his or her signature on the declaration vote certificate is genuine and (except in the case of postal votes and overseas e-votes) properly witnessed, and the vote contained in the envelope was recorded prior to the close of the poll. The date of birth shown on the declaration will be compared with the elector's date of birth as shown on the electoral roll as an aid to determine the elector's authenticity. A postal declaration vote dated after the close of the poll will not be admitted for further scrutiny.

In most cases, postal votes will have been issued by an officer using a computer to verify the elector's enrolment at the time of issue. In these cases, a label will be printed on the postal vote certificate, showing the elector's name and address, an ID number and a barcode. At the preliminary scrutiny, these labels will be used to simplify the process.

Where an elector's name is not included on the electoral roll, but records indicate that the person was removed from the roll in error, the elector's vote will be admitted for further scrutiny, provided the declaration vote certificate is properly completed.

Declaration votes may be issued to electors whose name cannot be found on the electoral roll at the time of voting. These electors are offered the opportunity to enrol before 6 pm on election day. If these electors enrol before the deadline, their name will appear on the final 'supplementary' certified list. In this case, assuming no other issues, the vote will be admitted to the count.

Antarctic electors

Typically, an Antarctic elector who has cast a vote under Part 11 of the Electoral Act will have his or her vote and details recorded as a declaration vote by the officer designated to receive the voting details. Such declaration vote certificates will be signed by an officer instead of the elector and that signature will not be witnessed. For 2020 ACT Legislative Elections, Antarctic electors may cast a vote electronically using the overseas e-voting system (OSEV).

Further scrutiny of declaration votes

Postal and other declaration ballot papers admitted to the further scrutiny are separated from the elector's declaration before they are unfolded or inspected. They are then treated in the same way as ordinary ballot papers. The separation of the declaration ballot paper and envelope does not occur before the close of voting on election day, and generally does not occur before the Sunday after election day.

The scanning of preferences at the central scrutiny centre

Unlike hand-counted elections, there will not be an automatic recheck or fresh scrutiny of the first manual count of all ballot papers counted at polling places. Instead, all preferences shown on all paper ballots will be scanned at the central scrutiny centre.

From the scanned image, software will “read” the preferences on every formal ballot paper and the preferences shown will be entered into a computer system at the central scrutiny centre. Any unreadable preferences, irregular preference orders, and apparent errors will require electoral officials to verify the interpretation by the software and make corrections on the computer system as necessary. All informal ballots will be manually rechecked by the Electoral Commissioner and/or Deputy Electoral Commissioner.

Scrutineers will be entitled to observe this process and seek rulings on interpretations placed on ballot papers.

Scanning

The scanning process will work as follows:

- All formal ballot papers will be parcelled at each polling place or counting centre in “batches” consisting of no more than 50 papers. Each batch will relate to first preferences counted to a particular candidate.
- At the central scrutiny centre, starting on the Sunday after election day, each batch will be checked and any post-it notes, paper clips etc removed. Batches will then be amalgamated into larger batches of up to 100 ballot papers (but this may vary), but still within polling place and electorate.
- Each batch will be allocated a number that will uniquely identify the batch, the relevant polling place and electorate.
- Each batch will be scanned and an image taken of every ballot paper.
- The image will be read by intelligent character recognition computer software.
- The system software will read the preferences shown on each ballot paper. The system will interpret the Robson rotation “version number” included on each ballot paper.
- The system uses a range of strategies to ensure that preferences are captured with 100% accuracy.
- Scrutineers are entitled to be present during the scanning and verification process to observe the process and to challenge any interpretations of preferences or formality.
- Verification stage 1 (**V1**) - After each batch of ballot papers has been scanned, operators will be presented with an image of each preference number on each ballot paper, and will conduct an initial check on the accuracy of the scanned results (for example, by checking every “1” on every ballot paper in the batch, every “2” on every ballot paper in the batch, and so on).
- After this initial check, the system software applies a set of “business rules” to each ballot paper. Those ballot papers that the software reads with a high level of certainty as consisting of an unbroken sequence of preferences will be automatically admitted for counting. Any ballot papers which have unclear numbers, or a break in the sequence of

numbers, or appear to be informal, or appear to show a first preference for only one candidate, will be flagged as requiring the attention of an Elections ACT official.

- Verification stage 2 (**V2**) - Any ballot papers that do not automatically pass the business rules check will require verification by an Elections ACT official.
- An Elections ACT official will investigate each ballot paper requiring verification by comparing the on-screen image of the ballot paper and the computer interpretation of the preferences to determine whether there has been any error in scanning or interpretation.
- The Elections ACT official will correct any identified errors in scanning or interpretation on the computer system. If necessary, the officer can view the original ballot paper if the scanned image is not sufficient to resolve any doubt.
- If an Elections ACT official changes a record of a vote on-screen, that change must be verified by a second Elections ACT official.
- Verification stage 3 (**V3**) - **Where a scrutineer believes that a ballot paper has been incorrectly interpreted**, the interpretation can be challenged. Challenged ballot papers will be re-examined by a senior electoral official.
- Once all apparent errors in a batch have been corrected on the system, or confirmation is given that a batch is error-free, the batch will be “committed” to the scrutiny system. **Scrutineers should be aware that, if they wish to challenge ballot papers, they should do so before the relevant batch is committed.**

The above process will continue until all formal paper ballots have been scanned and all ballot papers have been verified.

All ballot papers identified at the first manual count as “formal” will be scanned. It is possible that some of these ballot papers will be classified as informal at the scanning stage.

All ballot papers identified at the first manual count as “informal” will be manually rechecked by the Electoral Commissioner and/or the Deputy Electoral Commissioner at the central scrutiny centre. Any papers ruled at that stage to be formal will be scanned. Ballot papers confirmed as informal will not be scanned for the purposes of the scrutiny but will be scanned for ballot paper reconciliation and image capture purposes only.

Important COVID related procedure

Scrutineers in attendance during scanning or any other post-election day scrutiny, must comply with the Electoral Commissioner’s health and safety related directions and restrictions. These directions are informed and the entire election process will continue to be guided by the latest health advice in response to COVID-19.

The ballot paper scanning and verification process will be configured to allow for appropriate social distancing measures. Approximately 25 terminals will be set up to conduct the verification process. The first 10 terminals will be specifically for V1 verification. These terminals will be spaced 1.5m apart from one another and will be arranged with a monitor for the verification officer and a mirrored monitor so that scrutineers are able to view the V1 verification process.

The remaining approximately 15 terminals will be set up to conduct either V1, V2 or V3 verifications, depending on the stage of the scrutiny. These terminals will each involve three

monitors. One monitor for the verification officer and two mirrored monitors, each spaced 1.5m apart from one another, to allow scrutineers to view the verification process.

This arrangement will ensure there are sufficient viewing screens and terminals available for scrutineers to be fully engaged in the scrutiny process.

The distribution of preferences

By using a computer program to distribute preferences shown on electronic votes and scanned paper ballots, it is possible to conduct “interim” distributions of preferences. Previously, under the manual count system, the preference distribution process could not commence until the count and recheck of all first preferences shown on all ballot papers had been completed.

It is anticipated that the first interim distribution of preferences will take place on election night, using electronic voting data only. These results will be available via the Virtual Tally Room (VTR) website. The number of electronic votes available for publication on the VTR may increase as the evening progresses, as results from different locations are entered into the central computer.

Scrutineers and other observers should be aware that interim distributions of preferences only take account of a subset of votes, and the results can only be taken as possible indicators of the final results (including the identification of candidates likely to be elected). As further votes are entered in the system, the results could change from time to time. The final distribution of preferences, conducted after all ballots have been entered in the system, could give a different result to any earlier interim distribution.

It is anticipated that the scanning of paper ballots will commence on the Monday after election day. At the end of each day’s processing, an updated interim distribution of preferences will be published. This process will continue until all available ballots have been scanned and confirmed as correct.

The final results will be available after all postal ballot papers are received and checked and all ballots have been scanned. The final day for receipt of postal votes is the 6th day after election day – Friday 23 October. The timing of the announcement of the final result will depend on the time needed to scan all ballots.

The scrutiny process uses the Hare-Clark method set out in the *Electoral Act 1992*. A copy of the Schedule from the Electoral Act detailing the scrutiny method is at Attachment A.

An example of the Hare-Clark scrutiny method, demonstrating the basics of the system, is at Attachment B.

Recounts

Recounts usually occur when the result of an election is very close, and there is reason to believe that the original count may have contained errors. A recount may be held either at the discretion of the Electoral Commissioner (or the Deputy Electoral Commissioner as a delegate of the Electoral Commissioner) or as directed by the Electoral Commission. A recount of some or all ballots can be held at any time before the official declaration of an election result. A "recount" should not be confused with routine rechecks of votes carried out by electoral officials after election day.

A candidate may request a recount of election ballot papers in writing to the Electoral Commissioner, setting out the reasons for the request. The Commissioner (or Deputy Electoral Commissioner as a delegate of the Electoral Commissioner) will only conduct a recount if he or she thinks fit. If the Commissioner (or delegate) refuses to conduct a recount on the request of a candidate, that candidate may appeal to the full Electoral Commission for a review of that decision. The original decision maker is not permitted to take part in any decision of the full Commission in relation to an appeal against a decision of the Commissioner (or delegate) not to conduct a recount.

Before recounting any ballot papers, the Commissioner will notify each candidate of the date, time and place fixed for the recount.

An electoral officer conducting a recount has the same powers as if the recount was the original scrutiny and may reverse any decision made in an earlier scrutiny.

Candidates may appoint scrutineers to represent them at any recount. Scrutineers have the same rights and obligations at a recount as they have at earlier scrutinies.

With electronic voting and electronic vote counting, the Electoral Act sets out several ways in which a recount may be conducted:

- A recount may be conducted by recounting data from electronic ballot papers kept on a backup copy of electronic data produced at a polling place or scrutiny centre;
- A recount may be conducted by rerunning the program used to calculate the distribution of preferences, or by reloading the data into a different copy of the program and running that program;
- If practicable, a recount may be conducted by re-examining the accuracy of the scanning of paper ballots;
- If practicable, a recount may be conducted by a partial or full manual scrutiny of paper ballots from which preference data has been scanned; or
- If practicable, a recount may be conducted by a combination of a manual scrutiny of paper ballots and a computerised scrutiny of electronic ballot papers.

Disputing an election and other legal matters

This section describes the process for disputing the result of an election and seeking an injunction during the course of an election. Anyone considering disputing the result of an election or seeking an injunction should consult their legal advisors.

Court of Disputed Elections

The validity of an election may only be disputed by application to the Supreme Court sitting as the Court of Disputed Elections after the result of the election is declared.

If any of the following matters in relation to an election is called into question, the validity of the election is to be taken to be in dispute:

- The acceptance or rejection of a nomination of a candidate by the Commissioner;
- The eligibility of a person to be nominated as a candidate, to be elected or to be an MLA;
- Any matter connected with the printing or endorsement of ballot papers;
- Any matter connected with the issue, or scrutiny, of ballot papers by an officer;
- Any matter connected with electronic voting;
- Any matter connected with the admission or rejection of declaration votes by an officer at the preliminary scrutiny.

The following persons are entitled to dispute the validity of an election:

- A candidate in the election;
- An elector entitled to vote at the election;
- The Electoral Commissioner.

Procedures for disputing an election are set out in detail in Part 16 of the Electoral Act and in rules of the Supreme Court. Any person contemplating a challenge should consult their own legal advisers.

Injunctions

Where a person has apparently breached or proposes to breach a law of the Territory in relation to elections, a candidate or the Electoral Commissioner may apply to the Supreme Court for an injunction restraining that person from engaging in such unlawful conduct or requiring that person to do a particular act or thing, as the case requires.

Any candidate wishing to apply to the Supreme Court for an injunction should consult their own legal advisers.

Electoral offences

This section describes the electoral offences relating to scrutineers, party workers and other supporters of candidates.

Definition of “electoral matter”

Several offences relate to the treatment of published “electoral matter” (either in printed or electronic form). “Electoral matter” is defined as matter that is intended or likely to affect voting in an election. Matter is taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on:

- The election;
- The performance of the Government, the Opposition, a previous Government or a previous Opposition;
- The performance of an MLA or former MLA;
- The performance of a political party, a candidate or a group of candidates in the election; or
- An issue submitted to, or otherwise before, the electors in connection with an election.

However, a publication of the Legislative Assembly, including a committee of the Assembly, is not electoral matter.

Value of a penalty unit

The maximum fines that may be imposed for the offences listed in this section are given in penalty units. Under the ACT’s Legislation Act 2001, the value of a penalty unit is:

- \$160 if the person charged is an individual; or
- \$810 if the person charged is a corporation.

Offences related to postal voting and other forms of declaration voting

Witnessing electoral papers

A person shall not witness the signature of an electoral paper unless:

- The paper is signed by the signatory;
- He or she has seen the signatory sign the paper;
- He or she is satisfied as to —
 - The identity of the signatory; and
 - The truth of any statements made in the paper by the signatory; and
- He or she is able to sign his or her own name.

Penalty: 10 penalty units.

For the purposes of the above, a witness may satisfy himself or herself on the basis of:

- Personal knowledge of the signatory;
- Inquiries made of the signatory; or
- Any other reasonable means.

A candidate may not be a witness.

Soliciting applications for postal votes

A person shall not apply for declaration voting papers for postal voting for someone else unless they have that person's consent to make the application.

Penalty: 30 penalty units.

A person shall not do anything for the purpose of inducing someone else to complete an application form for postal voting papers and to return the completed form to an address other than an address authorised by the Electoral Commissioner.

Penalty: 30 penalty units.

A person shall not do anything to induce someone else to complete an application form for postal voting papers that is not a form approved for the purpose by the Electoral Commissioner.

Penalty: 30 penalty units.

Transmission of applications for postal votes

A person who accepts for transmission to the Commissioner a completed application for declaration voting papers for postal voting shall transmit the application to the Commissioner as soon as practicable.

Penalty: 10 penalty units.

Interference with declaration voting

Except at the request of the elector, a person shall not, without reasonable excuse:

- Communicate with an elector while he or she is casting a declaration vote;
- Interfere with an elector's casting of a declaration vote;
- Do anything to find out how an elector voted by declaration vote; or
- enable any other person to find out how an elector voted by declaration vote.

Penalty: 30 penalty units.

Soliciting completed declaration votes

A person shall not, without reasonable excuse, do anything for the purpose of inducing an elector to give to the person completed declaration voting papers for postal voting.

Penalty: 30 penalty units.

Transmission of completed declaration votes

A person who accepts for transmission to the Commissioner completed declaration voting papers for postal voting shall transmit them to the Commissioner as soon as practicable.

Penalty: 10 penalty units.

Opening envelopes containing declaration votes

Unless authorised under the Electoral Act, a person shall not, without reasonable excuse, open an envelope which appears to contain a completed declaration or postal vote.

Penalty: 5 penalty units.

Bribery

A person shall not offer, solicit or accept an electoral bribe.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

For the purposes of the above offence:

- “Bribe” does not include a declaration of public policy or a promise of public action;
- “Electoral bribe” means a bribe for the purpose of:
 - Influencing the vote of an elector;
 - Influencing the candidature of a person in an election;
 - Otherwise influencing the course or result of an election;
 - Inducing a person not to apply, or to withdraw an application, to be a candidate for a casual vacancy; or
 - Inducing a person not to apply, or to withdraw an application, to dispute the validity of an election.

There are also a range of generic bribery offences contained in the ACT’s Criminal Code 2002. For further detail, see Part 3.7 of the Criminal Code.

Influencing votes of hospital and nursing home patients

The proprietor of a hospital or nursing home, or an employee or agent of such a proprietor, shall not, without reasonable excuse, do anything for the purpose of influencing the vote of a patient or resident of the hospital or nursing home.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

Violence and intimidation

A person shall not, by violence or intimidation, hinder or interfere with the free exercise of a right under the Electoral Act or the free performance of a duty under the Electoral Act.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

Campaigning offences

For the purposes of the following campaigning offences:

“disseminate”, in relation to electoral matter (whether in printed or electronic form), means print, publish, distribute, produce or broadcast;

“news publication” means a newspaper or periodical and includes an electronic publication of a similar kind.

“reportage or commentary”, in relation to a news publication, means everything in the newspaper or periodical except:

- Advertisements; and
- Letters to the editor.

Dissemination of unauthorised electoral matter

A person commits an offence if the person disseminates electoral matter and the matter does not include:

- The name of the person who authorised the matter or its author; and
- A statement to the effect that the named person authorised, or is the author of, the matter; and
- If the matter is published for a registered party, a candidate for election or a person who has publicly indicated that he or she intends to be a candidate for election – a statement to the effect that the matter is published for the party, candidate or person.

Penalty: 10 penalty units.

The requirement to authorise electoral matter does not apply to the dissemination of electoral matter contained in reportage or commentary in a particular news publication if the publication includes a statement to the effect that a person named in the statement has authorised publication of all electoral matter contained in reportage or commentary in the publication.

Further, the requirement to authorise electoral matter does not apply to the dissemination of electoral matter contained in a letter to the editor in a particular news publication of a newspaper or periodical if:

- The author’s name and the place where the author lives are stated at the end of the letter; and
- The publication includes a statement to the effect that a person named in the statement has authorised publication of all electoral matter contained in letters to the editor in the publication.

For the purposes of the above, it is sufficient to identify where the author lives by reference to:

The suburb or town of, or nearest to, the author’s residence; and if the residence is outside the ACT - the State, other Territory or other country of that residence. The requirement to authorise electoral matter does not apply to the dissemination of electoral matter by an individual if:

- It is disseminated on or through social media; and
- It forms part of the expression of the individual’s personal political views; and

- The individual is not paid to express those views.

The requirement to authorise electoral matter does not apply to electoral matter on any of the following items, unless the item includes a representation of a ballot paper:

- A letter from an MLA that includes the name of the MLA and an indication that he or she is an MLA;
- A press release published by or for an MLA that includes the name of the MLA and an indication that he or she is an MLA;
- A report under the Annual Reports (Government Agencies) Act 2004;
- A publication of a government agency that includes:
 - The name of the agency; and
 - The City of Canberra Arms; and
 - The words "Australian Capital Territory", "Australian Capital Territory Legislative Assembly", "ACT Legislative Assembly", "Australian Capital Territory Government" or "ACT Government";
- A business or visiting card that promotes the candidacy of a person in an election;
- A letter or card on which the name of the sender appears;
- A T-shirt;
- A badge or button;
- A pen or pencil;
- A balloon; or
- An item prescribed by regulation.

"Advertorials"

An electoral "advertorial" is an advertisement in a news publication that appears to be reportage or commentary and includes electoral matter.

Where an electoral advertorial is published, the proprietor of the news publication must ensure the word "advertisement" is included, in legible form, as a headline to the advertisement on each page on which the advertisement appears.

Penalty: 10 penalty units.

Misleading or deceptive electoral matter

A person shall not disseminate, or authorise to be disseminated, electoral matter that is likely to mislead or deceive an elector about the casting of a vote.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

It is a defence to a prosecution for this offence if it is established that the defendant did not know, and could not reasonably be expected to have known, that the electoral matter was likely to mislead or deceive an elector about the casting of a vote.

Inducement to illegal voting—representations of ballot papers

A person shall not disseminate, or authorise to be disseminated, electoral matter including a representation of a ballot paper, or part of a ballot paper, likely to induce an elector to mark his or her vote otherwise than in accordance with the directions on the ballot paper.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

Graffiti

A person shall not, without reasonable excuse, mark any electoral matter directly on any building, footpath, hoarding, roadway, vehicle, vessel or any public or private place (whether on land or water or in the air) without the consent of:

- In the case of a place—the lessee or lawful occupier of the place; or
- In the case of an object—the owner or lawful possessor of the object.

Penalty: 10 penalty units.

Prohibition of canvassing within 100 metres of a polling place

A person shall not, within a polling place, or within 100 metres of the building containing a polling place:

- Do anything for the purpose of influencing the vote of an elector as the elector is approaching, or while the elector is at, the polling place;
- Do anything for the purpose of inducing an elector not to vote as the elector is approaching, or while the elector is at, the polling place; or
- Exhibit an electoral notice other than a notice authorised by the Commissioner for display there.

Penalty: 5 penalty units.

For the purposes of this offence, “polling place” means:

- A place where declaration voting is taking place;
- A polling place on election day; or
- A place where mobile polling is taking place.

An officer may, if directed by the Commissioner, remove or obliterate a notice which is exhibited in breach of this offence. A person shall not obstruct an officer exercising or attempting to exercise this function.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

Badges and emblems

An officer or scrutineer shall not wear or display a badge or emblem associated with a candidate or political party in a polling place or early voting centre, or during mobile polling.

Penalty: 10 penalty units.

How-to-vote material in polling places

A person shall not, except for the purposes of lawfully assisting another person to vote, exhibit or leave any printed electoral matter in a polling place, early voting centre or place where mobile polling is being conducted.

Penalty: 5 penalty units.

Voting fraud

A person shall not supply a ballot paper unless authorised to do so.

Penalty: 50 penalty units.

A person shall not obtain a ballot paper by fraudulent means.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

A person, other than an elector, shall not mark a ballot paper, unless expressly authorised under the Electoral Act.

Penalty: 50 penalty units.

A person shall not fraudulently take a ballot paper out of a polling place, early voting centre or scrutiny centre.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

A person shall not fraudulently put a ballot paper, or any other paper, in a ballot box.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

A person shall not, without reasonable excuse, interfere with a ballot box, or a ballot paper, unless authorised to do so.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

Identification of voters and votes

Except as authorised under the Electoral Act, a scrutineer (or a person who has been, but is no longer, a scrutineer) shall not, directly or indirectly, disclose any information acquired in the performance of his or her functions which would be likely to enable it to be known how an identified voter has voted.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

Electoral papers

For the purposes of the following offences, "electoral paper" means any document, form or notice provided for or required under the Electoral Act.

Electoral papers—forgery

There are a range of generic forgery offences contained in the ACT's Criminal Code 2002. These offences would include, for example, the offence of forging an electoral paper. (For further detail, see Part 3.6 of the Criminal Code.)

Penalty (for forgery): 1000 penalty units or imprisonment for 10 years, or both.

Electoral papers—unauthorised possession

A person shall not, without reasonable excuse, except for the purposes of the Electoral Act:

- Possess an electoral paper; or
- Possess an instrument designed or adapted particularly for producing an electoral paper, or an official mark on an electoral paper.

Penalty: 30 penalty units.

Electoral papers—false or misleading statements

There are a range of generic offences related to the making of false and misleading statements contained in the ACT's Criminal Code 2002. These offences would include, for example, the offence of making a false and misleading statement in an electoral paper. (For further detail, see Part 3.4 of the Criminal Code.)

Penalty (for making a false and misleading statement): 100 penalty units or imprisonment for 1 year, or both.

Electoral papers—defacement etc.

A person shall not fraudulently deface, remove, mutilate or destroy an electoral paper.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

Ballot Paper – Photographs

A person commits an offence if the person takes a photograph of a ballot paper used by the person or another elector for voting in an election and the photograph shows, or would be likely to show, how the person or elector voted in the election if the person knows the

identity of the elector or it would be possible for the person or someone else to find out the identity of the elector. The definition of photograph includes a video recording.

Penalty: 10 penalty units

Electronic voting offences

A person must not, without reasonable excuse, destroy or interfere with any device or computer program that is used, or intended to be used, for or in connection with electronic voting.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

A person must not, without reasonable excuse, destroy or interfere with any device or computer program that is used, or intended to be used, for counting votes electronically.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

Control of behaviour at voting centres

A person shall not, without reasonable excuse, disrupt an activity at a voting centre.

Penalty: 10 penalty units.

A person at a voting centre shall not, without reasonable excuse, disobey a lawful direction given by the OIC.

Penalty: 10 penalty units

A person shall not, without reasonable excuse, enter or remain at a voting centre without the permission, express or implied, of the officer in charge of the centre.

Penalty: 10 penalty units.

The above offence does not apply:

- To an officer;
- To a scrutineer who is entitled to be on the premises; or
- If the voting centre is a polling place—to a voter who enters the place for the purpose of voting and remains no longer than is necessary and reasonable for that purpose.

A person who contravenes this section may be removed from the premises by a police officer or by an authorised officer.

For the purposes of the above offences “voting centre” means an early voting centre, a polling place or a scrutiny centre.

Improper influence—members of Electoral Commission etc.

A person shall not do anything improper for the purpose of influencing a member of:

- The Electoral Commission;
- An augmented Commission; or
- A Redistribution Committee.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

Glossary

ACT Electoral Commission

The 3-member statutory body comprising a Chairperson, the ACT Electoral Commissioner and a third member. Also described as the Commission.

ACT Electoral Commissioner

The person, also described as the Commissioner, who is appointed as a statutory office holder, to carry-out electoral administration for the ACT. The Commissioner and the staff employed to assist the Commissioner are collectively known as Elections ACT.

advertisements relating to an election

An advertisement relates to an election or referendum if it contains electoral or referendum matter, whether or not consideration (payment) was given for the publication or broadcasting of the advertisement.

authorisation statement

Electoral matter (whether in printed or electronic form) that is printed, published, distributed, produced or broadcast must (with some exceptions) include an authorisation statement. Further details on authorisation of electoral matter can be found in the Elections ACT Factsheet authorising electoral material on its website www.elections.act.gov.au under publications.

Commission

ACT Electoral Commission.

Elections ACT

The office of the ACT Electoral Commissioner and the staff assisting the Commissioner.

Electoral Act

Electoral Act 1992 of the Australian Capital Territory.

electoral matter

Electoral matter includes any material, in printed or electronic form, that is intended to affect or is likely to affect voting in an election for the ACT Legislative Assembly. It is taken to be intended or likely to affect voting if it contains an express or implicit reference to, or comment on:

- The election;
- The performance of the Government, the Opposition, a previous Government or a previous Opposition of the ACT Legislative Assembly;
- The performance of an MLA or former MLA;
- The performance of a political party, candidate or a group of candidates in an election; or
- An issue submitted to, or otherwise before, the electors in connection with an election.

However, a publication of the Assembly (including a committee of the Assembly) is not electoral matter.

MLA

A Member of the ACT Legislative Assembly.

pre-election period

The pre-election period commences 36 days before election day and ends on election day.

registered officer

The person identified in the register of political parties, who has the authority to nominate and verify the endorsed candidates of the party.

The registered officer cannot be replaced except by a formal written application made under the Electoral Act.

A deputy registered officer may be appointed who also has authority to nominate and verify the endorsed candidates of the party.

registered political party

A political party registered with the Commission under the Electoral Act. Political parties not registered with the Commission are treated as third parties for electoral purposes.

The Commission's **How to Register a Political Party for ACT Legislative Assembly Elections** brochure, which sets out the requirements for registration, is available from the Elections ACT website or from its office.

Extract from the *Electoral Act 1992*

Schedule 4 Ascertaining result of poll

(see s 185)

Part 4.1 Preliminary

1 Interpretation for sch 4

In this schedule:

ballot paper means a ballot paper that is formal under part 12.

continuing candidate means a candidate, other than a successful candidate, an excluded candidate or a candidate who died before polling day.

count means an allotment of votes under clause 3 (1), 6 (3), 9 (2) (c) or 14 (2).

count votes—see clause 1A.

excluded candidate means a candidate excluded under clause 8.

next available preference means the next highest preference recorded for a continuing candidate on a ballot paper.

quota—

a. for this schedule generally—see clause 1B; and

b. for part 4.3 (Casual vacancies)—see clause 12.

successful candidate means a candidate who is successful under clause 3, 4, 6, 9 or 14.

surplus, in relation to a successful candidate, means the candidate's total votes less the quota, if the resulting number of votes is 1 or greater.

total votes, in relation to a candidate, means the sum of all votes allotted to the candidate.

transfer value—

a. for this schedule generally—see clause 1C; and

b. for part 4.3 (Casual vacancies)—see clause 13.

1A Meaning of count votes—sch 4

(1) For this schedule, **count votes**, in relation to a candidate, means the number of votes worked out as follows:

$$BP \times TV$$

(2) Any fraction must be rounded down to 6 decimal places.

(3) In this clause:

BP means the number of ballot papers to be dealt with at a count that record the next available preference for the candidate.

TV means the transfer value of those ballot papers.

1B *Meaning of quota—sch 4*

- (1) For this schedule, **quota** means the quota of an electorate for an election worked out as follows:

$$\frac{BP}{N + 1} + 1$$

Note **Quota**, for pt 4.3 (*Casual vacancies*)—see cl 12.

- (2) However, any fraction is to be disregarded.

- (3) In this clause:

BP means the number of ballot papers for the election.

N means the number of positions to be filled at the election.

1C *Meaning of transfer value—sch 4*

- (1) For this schedule, the **transfer value** of a ballot paper is the transfer value worked out under this clause.

Note **Transfer value**, for pt 4.3 (*Casual vacancies*)—see cl 13.

- (2) For the allotment of votes from the surplus of a successful candidate, the **transfer value** of a ballot paper that specifies a next available preference is worked out as follows:

$$\frac{S}{CP}$$

- (3) For the allotment of votes of votes under clause 9 (2) (c) (Votes of excluded candidates), the **transfer value** is –

- a. for a ballot paper in relation to which votes were allotted to the excluded candidate under clause 3 (First preferences) —1; or
- b. for a ballot paper in relation to which count votes were allotted to the excluded candidate under clause 6 (3) (Surplus votes) or clause 9 (2) (c) (Votes of excluded candidates)—the transfer value of the ballot paper when counted for that allotment.

- (4) However, if the transfer value of a ballot paper worked out in accordance with subclause (2) would be greater than the transfer value of the ballot paper when counted for the successful candidate, the **transfer value** of that ballot paper is the transfer value of the ballot paper when counted for the successful candidate.

- (5) In this clause:

CP means the number of ballot papers counted for the candidate at the count at which the candidate became successful and that specify a next available preference.

S means the surplus.

2 *Disregarding preferences*

- (1) This clause applies if effect is to be given to preferences indicated in candidate squares on a ballot paper under section 180.
- (2) If the same number is marked in 2 or more candidate squares on a ballot paper, those numbers and any greater number shall be disregarded in determining the elector's preferences.
- (3) If a number is missing from the series of consecutive whole numbers marked in the candidate squares on a ballot paper, the missing number and any greater number shall be disregarded in determining the elector's preferences.

Part 4.2 General

3 *First preferences*

- (1) For each ballot paper recording a first preference for a continuing candidate, 1 vote shall be allotted to the candidate.
- (2) For subclause (1), a ballot paper on which a first preference for a candidate who died before polling day is recorded shall be taken to record a first preference for the candidate for whom the next available preference is recorded.
- (3) After the allotment of votes under subclause (1), each continuing candidate's total votes shall be calculated and, if the votes equal or exceed the quota, the candidate is successful.

4 *Scrutiny to cease*

- (1) If, after a calculation under clause 3 (3), 6 (4) or 9 (2) (d), the number of successful candidates is equal to the number of positions to be filled, the scrutiny shall cease.
- (2) If, after a calculation under clause 3 (3) or 6 (4) or after all the ballot papers counted for an excluded candidate have been dealt with under clause 9—
 - a. the number of continuing candidates is equal to the number of positions remaining to be filled; and
 - b. no successful candidate has a surplus not already dealt with under clause 6;

each of those continuing candidates is successful and the scrutiny shall cease.

5 *Scrutiny to continue*

If the scrutiny has not ceased in accordance with clause 4 and—

- a. 1 or more successful candidates have a surplus not already dealt with under clause 6—subject to clause 4, each surplus shall be dealt with in accordance with clause 6; or
- b. there are no successful candidates with such a surplus—1 continuing candidate shall be excluded in accordance with clause 8 and the ballot papers counted for him or her shall be dealt with in accordance with clause 9.

6 *Surplus votes*

- (1) Subject to clause 7, this clause applies in relation to the surplus of a successful candidate.
- (2) Each ballot paper counted for the purpose of allotting votes to the successful candidate at the count at which the candidate became successful shall be dealt with as follows:
 - a. if it does not specify a next available preference—it shall be set aside as finally dealt with for this part;
 - b. if it specifies a next available preference—it shall be grouped according to the candidate for whom that preference is recorded.
 - c. The count votes for each continuing candidate shall be determined and allotted to him or her.

(4) After the allotment under subclause (3), the continuing candidates' total votes shall be calculated and, if the total votes of a candidate equal or exceed the quota, the candidate is successful.

7 More than 1 surplus

- (1) In this clause—
 - a. a reference to a **successful candidate** is a reference to a successful candidate with a surplus not already dealt with under clause 6; and
 - b. a reference to the **earliest count** is a reference to the earliest count at which a successful candidate obtained a quota.
- (2) If there are 2 or more successful candidates, the surplus of the relevant candidate shall be dealt with in accordance with clause 6.
- (3) For subclause (2)—
 - a. if only 1 successful candidate obtained a quota at the earliest count—that candidate is the relevant candidate;
 - b. if 2 or more successful candidates obtained a quota at the earliest count—the candidate who, of those candidates, has the largest surplus is the relevant candidate; or
 - c. if 2 or more successful candidates (**contemporary candidates**) who obtained a quota at the earliest count have the same surplus, being a surplus larger than that of any other candidate who obtained a quota at that count and—
 - i. 1 of the contemporary candidates had more total votes than any other contemporary candidate at the last count — that candidate is the relevant candidate; or
 - ii. 2 or more contemporary candidates have the same total votes, being a total larger than that of any other contemporary candidate (a **non-tied contemporary candidate**) at the last count - each non-tied contemporary candidate is no longer considered under this clause and —
 - (A) subparagraph (i) and this subparagraph are applied to each preceding count until a relevant candidate is worked out; or
 - (B) if a relevant candidate cannot be worked out by applying subparagraph (i) and this subparagraph to the preceding count —

the contemporary candidate who is determined by the commissioner by lot is the relevant candidate.

(4) If—

- a. a person becomes the relevant candidate under subclause (3) (c) (ii) (B); and
- b. the ballot papers are recounted in accordance with section 187; and
- c. the same candidates would, apart from this subclause, become the contemporary candidates once again under that subparagraph;

the person shall be taken to be the relevant candidate for subclause (2) in the recounting of those ballot papers.

8 Exclusion of candidates

- (1) If clause 5 or 15 requires a candidate to be excluded, the candidate with the least total votes shall be excluded.
- (2) If 2 or more candidates each have the same total votes, being fewer total votes than any other candidate and—
 - a. 1 of those candidates had fewer total votes than any other of those candidates at the last count —that candidate is excluded; or
 - b. 2 or more of the candidates have the same total votes, being a total fewer than that of any other candidate (a **non-tied candidate**) at the last count - each non-tied candidate is no longer considered under this clause and —
 - i. paragraph (a) and this paragraph are applied to each preceding count until 1 candidate is excluded; or
 - ii. if 1 candidate cannot be excluded by applying paragraph (a) and this paragraph to the preceding count — the candidate who is determined by the commissioner by lot is excluded.
- (3) If—
 - a. a person is excluded under subclause (2) (b) (ii); and
 - b. the ballot papers are recounted in accordance with section 187; and
 - c. that paragraph would, apart from this subclause, be applicable once again to the same candidates;

the person shall be taken to be excluded in the recounting of those ballot papers.

9 *Votes of excluded candidates*

- (1) If a candidate is excluded in accordance with clause 8, the ballot papers counted for the candidate shall be sorted into groups according to their transfer values when counted for him or her.
- (2) Subject to subclause (3), each group under subclause (1) shall be dealt with as follows:
 - a. if a ballot paper in the group does not specify a next available preference—it shall be set aside as finally dealt with for this part;
 - b. if a ballot paper in the group specifies a next available preference—it shall be grouped according to the candidate for whom that preference is recorded;
 - c. each continuing candidate's count votes shall be determined and allotted to him or her;
 - d. continuing candidates' total votes shall be calculated and, if the votes of any of those candidates equal or exceed the quota, the candidate is successful.
- (3) The groups referred to in subclause (1) shall be dealt with under subclause (2) starting with the group with the highest transfer value and, subject to subclause 4 (1) or 15 (2), continuing in descending order until all the groups have been dealt with.

10 *Setting aside ballot papers*

If, after a calculation under clause 3 (3), 6 (4) or 9 (2) (d), the total votes of a candidate who became successful on that calculation equal the quota, the ballot papers counted for that candidate shall be set aside for this part.

Attachment B

How the Hare-Clark system works – an example

How votes are counted

The first step in counting votes using the Hare-Clark system is to count the number of first preference (or number “1”) votes for each candidate. Only ballot papers with a single figure “1” marked against one candidate are counted — ballot papers without a figure “1” or with more than one figure “1” are set aside as informal. Ticks and crosses are not counted.

In the table on page 51, the count of first preference votes is shown at “count 1”. The table is split into two halves. The left half shows ballot papers counted to each candidate, and the right half shows the numbers of votes those ballot papers represent. At count 1, the number of ballot papers is equal to the number of votes counted to each candidate.

How the quota for election is calculated

After all the valid first preference votes are counted, the quota can be calculated. The quota is the lowest number of votes a candidate needs to be certain of election. Any candidate with votes equal to or greater than the quota will be elected. A quota is calculated by using the formula:

(The quote in the 5-member electorates will be one-sixth plus one, or roughly 16.67%.)

$$\frac{\text{total number of valid votes}}{\text{number of vacancies} + 1} + 1$$

In our example, with 3 vacancies and 24,000 ballot papers, the quota is:

$$\frac{24,000}{3 + 1} + 1 = 6,001$$

Surplus votes

If a candidate has more first preference votes than the quota, the surplus votes counted to the candidate are distributed to other candidates according to the preferences indicated on ballot papers by the voters. All the ballot papers counted to an elected candidate with a surplus are distributed at a reduced value called a “fractional transfer value”. This value is calculated as follows:

$$\frac{\text{number of surplus votes}}{\text{total number of ballot papers with further preferences}}$$

In our example, candidate Blue has 10,000 first preference votes, and the quota is 6,001 votes. Blue has a surplus of 3,999 votes. The fractional transfer value applied to Blue’s ballot papers is 0.3999 (3,999/10,000). All 10,000 ballot papers are distributed to continuing candidates, with each ballot paper having a value of 0.3999 of a vote. In other words, the 10,000 ballot papers are distributed with a total value of 3,999 votes (10,000 x 0.3999), which is equal to Blue’s surplus. Blue’s surplus is distributed at count 2 on the scrutiny sheet.

After all surplus votes from each elected candidate are distributed, the total number of votes counted to each candidate is calculated. Any further candidate with votes equal to or greater than the quota will be elected. Provided vacancies remain to be filled, the surplus votes of any such candidate are also distributed, but at this stage the only votes that are distributed to other candidates are those received by the successful candidate at the stage at which the candidate received more votes than the quota. In our example, there are no other candidates with a surplus at this stage.

Excluded candidates

If, after all surplus votes have been distributed, vacancies remain to be filled, the candidate with the fewest total votes will be “excluded” and his or her ballot papers will be distributed to continuing candidates according to the preferences shown by the voters. At this stage, ballot papers are distributed at the value at which they were received by the excluded candidate. Ballot papers received by the candidate as first preference votes have a value of “1”, while ballot papers received following the distribution of a surplus will have a fractional transfer value.

In our example, the candidate with the fewest votes after count 2 is Pink. Pink’s ballot papers are distributed to other candidates at count 3. As Pink had only received ballot papers as first preferences, all of Pink’s ballot papers are transferred to continuing candidates with a transfer value of “1”.

After ballot papers are distributed from an excluded candidate, the total votes counted to each continuing candidate are calculated to determine whether any candidate has received votes equal to or greater than the quota.

The process of distributing surplus votes from elected candidates and excluding the candidate with the fewest votes continues until all vacancies are filled.

In our example, no other candidate has received a quota of votes, so the candidate with the next fewest votes, Grey, is excluded. Grey had received ballot papers at three

counts: first preference votes at count 1, ballot papers from Blue's surplus at count 2, and ballot papers from Pink at count 3. Ballot papers with different transfer values are always kept separate from one another, so Grey's ballot papers with a transfer value of "1" (received at counts 1 and 3) are distributed at count 4. As a result, Red received more votes than the quota. At this stage no more votes are distributed to Red. The ballot papers received by Grey at count 2, at a transfer value of 0.3999, are transferred at count 5.

Filling the final vacancy in our example

Red now has more votes than the quota. With 6,399 votes, Red has a surplus of 398. The fractional transfer value applied to Red's surplus ballot papers is 0.2653 ($398/1,500$) — only those ballot papers received at the count at which Red received more votes than the quota (count 4) are included in Red's surplus. Red's surplus is distributed at count 6 on the scrutiny sheet.

As a result, Brown is elected to fill the final vacancy, and the scrutiny ends.

Hare-Clark election — Scrutiny Sheet

No. of vacancies: 3

No. of formal ballot papers: 24000

Quota: $\frac{(24000)}{3 + 1} + 1 = 6001$

Count no.	Ballot Papers							Votes										
	Blue	Red	Brown	Pink	Grey	Green	Total ballot papers	Transfer value	Votes transfd	Blue	Red	Brown	Pink	Grey	Green	Loss by fraction	Total votes	Comments
1	10000	750	4000	2750	1500	5000	24000	1	24000		10000	4000	2750	1500	5000		24000	Blue elected
2		6000			4000		10000	0.3999	3999		-3999			1599		1		Blue's surplus distributed
3		1750	500		500		2750	1	2750		6001	4000	2750	3099	5000	1	24000	Pink excluded
4		1500	500				2000	1	2000		6001	4500	0	3599	5000	1	24000	Grey being excluded
5			1750			2250	4000	0.3999	1599		6001	5000	0	1599	5000	1	24000	Red elected
6			1250			250	1500	0.2653	398		6001	699	0	-1599	899	1	24000	Grey excluded
											6001	6030	0	0	5965	3	24000	Brown elected

COVID Safe Procedures

The ACT Electoral Commission is committed to providing the highest standard of electoral services for the 2020 ACT Legislative Assembly election. During the COVID-19 pandemic this includes a range of health and safety measures as advised by ACT Health to protect voters, election staff and other participants. The ACT Electoral Commission will follow a range of COVID-19 precautions at voting venues and throughout the election process to safeguard you, your colleagues, electoral workers and the public.

In addition to monitoring and controlling the total number of staff and scrutineers in the central scrutiny centre as detailed in the introduction, measures for minimising the spread of COVID-19 include:

1. Enforce proper social distancing:

Parties and candidates will need to ensure that scrutineers near a polling venue have fully informed themselves of ACT Government health restrictions and laws in place regarding social distancing.

- Stay alert at all times to ensure they maintain 1.5 metres distance from teammates, Elections ACT staff and electors
- The current COVID-19 environment may impact scrutineers' ability to hand out how-to-vote cards as they ordinarily would for any other electoral event.
- It is advised that the scrutineer should not enter a polling place or a scrutiny centre if they are unwell.
- There will be signs outlining the hygiene and social distancing rules, and those who do not adhere to the rules will be requested to leave.
- Social-distancing rules will apply to all in attendance and seating will be appropriately spaced at the central scrutiny centre.
- Sneeze shields will be fitted at counting tables to keep Elections ACT staff and scrutineers distanced.

2. Hygiene:

The following hygiene measures are to be enforced at polling and scrutiny locations:

- **Scrutineers must wear masks**, and may wear other safety equipment as appropriate such as gloves inside polling and scrutiny venues.
- Scrutineers are to use the provided hand sanitiser frequently and especially after they touch equipment accidentally or come into contact with other people.
- Scrutineers are encouraged to wash hands frequently; and
- Scrutineers should minimise touching any surfaces or equipment in the polling place (such as the Issuing Point table, voting screens and the ballot box).

